#### **REAL ESTATE COMMISSION MEETING**

Heber M. Wells Building
Room 2B
9:00 a.m.
November 19, 2008
TELECONFERENCE MEETING

#### **MINUTES**

## STAFF MEMBERS PRESENT:

Mark B. Steinagel, Division Director Dee Johnson, Enforcement Director Mark Fagergren, Education/Licensing Director Traci Gundersen, Assistant Attorney General Renda Christensen, Board Secretary

### **COMMISSION MEMBERS PRESENT:**

Doyle "Sam" Sampson, Jr., Chair Gary Hancock, Vice Chair H. Blaine Walker, Commissioner Kay Ashton, Commissioner Stefanie Tugaw-Madsen, Commissioner

### **GUESTS**

Kevin Swenson Paul Naylor
Linda Leavitt Ron Duyker
Mike Welker Jack Marinello
Lance Miller

The November 19, 2008 meeting of the Utah Real Estate Commission began at 9:03 a.m. with Chair Sampson conducting.

#### PLANNING AND ADMINISTRATIVE MATTERS

#### Approval of Minutes

The Minutes from the October 15, 2008 meeting need one item corrected. Chair Sampson was not in Savanna, Georgia, he was actually in Jacksonville, Florida. With this correction, the minutes were approved as written.

### **DIVISION REPORT**

# <u>DIRECTOR'S REPORT - Mark B. Steinagel</u>

Director Steinagel gave an update on the Division bill. The bill has many technical changes, and some of the proposed changes are updating some of the Land Sales Practices Act, and to bring fine amounts in line with the three licensing groups on the Land Sales Practices Act and Timeshare. The Commission has previously approved amending the law to require criminal background checks for all broker applicants, and allowing people who expire additional time to complete additional CE and pay a

reinstatement fee. Another item in the proposed bill is the Commission having the authority to modify an action they have done for restitution purposes.

There are a couple of items under the Recovery Fund that are in the bill. There has been a slight increase in claims under the Recovery Fund to approximately four or five claims this summer. Two things that are proposed to bring the Fund up to date are increasing the amount of recovery per transaction, and to allow a criminal restitution judgment instead of only civil judgments. The Division is currently working on a handout to give to those who file a complaint with the Division that notifies them of the possibilities to recover.

There is one other item being discussed to add in the bill. This addition would make it an unlawful practice for non-payment of a commission by a principal broker to their sales agent as evidenced by a court ordered judgment.

The new broker exam will be in effect in January 2009. Director Steinagel has modified the rule dealing with broker curriculum content to bring it in line with the new exam. Also, regarding the inducements rule that was approved last month, the rule will be submitted to the Administrative Rules Committee tomorrow.

Director Steinagel was looking through some of the approved forms on the Division's website and noticed that some are quite old. He asked the Commission if they would like to review these forms and see if they are still necessary. Ms. Christensen will print off these forms and include them in the Commission packets for next month.

Director Steinagel said the Utah Apartment Association will be on the Agenda for the meeting next month.

Director Steinagel asked Commissioner Walker to comment on the ARELLO meeting that they both attended last month. Commissioner Walker said that he has been elected to the Board of Directors, and he thought the meetings were better than some previous meetings.

The topic of similar real estate brokerage business names was discussed. If the issue of misleading advertising is a problem, perhaps a legislative change would be necessary.

### INVESTIGATIONS REPORT – Dee Johnson

There are three Stipulations being presented to the Commission today. The respondents have been given the chance to appear today to answer any questions the Commission might have and have declined to attend.

Review of Stipulations: Belinda Gail Campbell Robert Jorgensen Julie Thompson Mr. Johnson said the Division has been receiving more complaints because of the changing market. He said there has been a procedural change out of necessity and choice when reviewing complaints. The procedure is changing now because the Division is receiving so many frivolous complaints that the enforcement side would be spending many hours to determine whether or not to open a case. In the last month, enforcement has received probably another 30 complaints on top of the 38 received, which were disregarded or sent back to those who sent them in, asking for additional information before we can actually investigate the complaint.

Director Steinagel mentioned next month the Attorney General's office will be on the agenda for Commissioner training.

## EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren reported the licensing statistics show a slight decline in numbers. The year-to-date October numbers show a 6% drop in licensees, and approximately 2% growth in inactive licensees. The industry is facing some challenging times.

Mr. Fagergren gave an update on the broker curriculum and the broker exam. The committee will have a final meeting tomorrow and it will be a day-long session. The new exam will be ready on January 1, 2009. Pearson Vue (the testing provider) routinely conducts a national survey among real estate professionals about their work processes on a daily basis to ensure that the licensing exam reflects reality in terms of specific knowledge an individual should have to be a practitioner. There are a few areas in the general component of the curriculum that have not been included that are being addressed on a national basis. There are six topics on this list: asbestos, CERCLA (commonly known as superfund), flood plains, mold, protected species, and the Do-Not-Call Registry. Mr. Fagergren would like the Commission to authorize the Division to include these topics in the approved sales agent and broker curriculum so that our state will not get out of step with the rest of the country in terms of included subject matter on the general portion of the exam. A motion was made to approve these topics to be added to the curriculum. The motion had unanimous approval.

The new broker test will include significant changes to the state component and have 100 questions with an additional 10 survey questions. The general portion of the exam will have 80 questions with an additional five survey questions. The new broker exam will include a total of 195 questions. Currently, there are six schools that teach broker education in Utah. Of those six, three of those have elected not to teach this new curriculum at this time.

Mr. Fagergren mentioned continuing education. There are now approximately 1,000 classes that have been approved in our state. He had a few CE applications to present to the Commission to demonstrate what the staff goes through in determining approval of these courses.

Mr. Marinello stated the state Insurance Department has issued their new unfair inducement and marketing rule as it pertains to title insurance agencies and

companies. It became effective November 7, 2008. He wanted to know if there would be a sharing of information between their department and the Division. An example would be things that are no longer provided by title companies to real estate licensees or lenders would be: For Sale By Owner lists, mortgage leads (based on a mortgage criteria i.e., adjustable rate loans, etc.), no rental lists, etc. Mr. Marinello suggested that an article be prepared for the Division's newsletter.

#### **CLOSED TO PUBLIC**

A motion was made to go into an Executive Session from 10:28 a.m. to 10:42 a.m.

#### **OPEN TO PUBLIC**

A motion was made and accepted to have Director Steinagel sign the Closed Meeting Act document and also the Stipulations on behalf of the Commission for the telephonic meeting today.

Results of Executive Session

Stipulations:

Belinda Gail Campbell - Approved Robert Jorgensen - Approved Julie Thompson - Approved

A motion was made and accepted to adjourn the meeting at 10:43 a.m.